

**INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT
DISPUTES**

Almaden Minerals Ltd. and Almadex Minerals Ltd.

v.

United Mexican States

(ICSID Case No. ARB/24/23)

PROCEDURAL ORDER No. 6

Members of the Tribunal

Prof. Luca G. Radicati di Brozolo, President of the Tribunal
Mr. Oscar M. Garibaldi, Arbitrator
Prof. Jorge E. Viñuales, Arbitrator

Secretary of the Tribunal

Ms. Anneliese Fleckenstein

Assistant to the Tribunal

Ms. Lucia Pontremoli

Decision on the Parties' applications on document production

June 24, 2026

WHEREAS

1. On March 11, 2026, the Tribunal issued Procedural Order No. 5 (“**PO5**”), ruling on the Parties’ requests for the production of documents (“**Document Requests**”).
2. On April 27, 2026, Claimants informed the Tribunal of Respondent’s alleged failure to comply with its document production obligations under PO5 by withholding certain documents responsive to Claimants’ Document Requests that were either granted by the Tribunal or not objected by Respondent and by producing documents with excessive and unjustified redactions. Claimants applied for an order that Respondent produce (i) the non-produced documents, (ii) unredacted versions of the produced documents, and (iii) a privilege log compliant with PO5 (“**Claimants’ Requests**”).
3. On May 4, 2026, Respondent opposed Claimants’ Requests, arguing that it conducted a good-faith, comprehensive and diligent search for responsive documents and that all redactions were justified, as they referred to information qualifying as confidential pursuant to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (“**CPTPP**”), the IBA Rules on the Taking of Evidence in International Arbitration (“**IBA Rules**”), and Procedural Order No. 2 (“**PO2**”).
4. On May 8, 2026, Respondent informed the Tribunal of Claimants’ alleged failure to comply with their production obligations under PO5 by withholding documents on the grounds of privilege, and accordingly requested that the Tribunal (i) deny Claimants’ objections based on privilege and (ii) order the production of the withheld documents, permitting redactions only to the extent that Claimants demonstrate a valid basis under Article 9.2 of the IBA Rules (“**Respondent’s Requests**”).
5. In compliance with the Tribunal’s instructions of May 12, 2026, on May 27, 2026:
 - the Parties submitted a table providing additional information on the documents allegedly withheld or unjustifiably redacted by Respondent (“**Table**”); and
 - Claimants commented on Respondent’s Requests, arguing that the documents identified in their privilege log were properly withheld and requesting the rejection of Respondent’s Requests and an order that Respondent bear the related costs.

THE TRIBUNAL DECIDES AS FOLLOWS:

I. CLAIMANTS' REQUESTS

6. As mentioned, Claimants request an order that Respondent:
- (i) produce all outstanding documents responsive to their Document Requests which were either not objected by Respondent or granted by the Tribunal;
 - (ii) produce unredacted versions of all documents produced with allegedly unjustified redactions; and
 - (iii) submit a privilege log in the format of Annex C to PO5 identifying all documents withheld on grounds of legal privilege.¹
7. The Tribunal addresses each of Claimants' Requests separately in Sections I.A, I.B and I.C below.

I.A. Respondent's alleged failure to produce responsive documents (Claimants' Request (i))

8. Claimants allege that Respondent produced no documents responsive to *Document Requests Nos. A4, C4, D2, D3, D4, E1, E5, E8, G1, G3 and G6*.
9. Concerning *Document Requests Nos. A4, C4, D2, D3, D4, E1, E5, E8 and G6*, Respondent declares that no additional responsive documents exist beyond those voluntarily produced.²
10. The Tribunal takes note of Respondent's declaration and **dismisses Claimants' Request (i) with respect to Document Requests Nos. A4, C4, D2, D3, D4, E1, E5, E8 and G6**. This decision is without prejudice to any subsequent request Claimants might submit – including a request for adverse inferences under Article 9.6 of the IBA Rules – should additional responsive documents be shown to exist.
11. As to the remaining two Document Requests – with respect to which Claimants allege that no responsive documents were produced, i.e., *Document Requests Nos. G1 and G3* – Respondent does not expressly confirm that no additional responsive documents exist. In the Table, Respondent states only that “*la información relacionada con [las Solicitudes G1 y G3] se encuentra cubierta por los Expedientes de las Concesiones Cerro Grande y Cerro Grande 2, producidos en respuesta a las Solicitudes A.1 y A.2.*”³ Claimants dispute this.⁴

¹ Claimants' letter dated April 27, 2026, ¶ 29.

² Table, cells G11, I103, G124, G125, G126, I139, I170, I190, I205.

³ Table, cells G196, G198.

⁴ Table, cells F196, F198.

12. **The Tribunal therefore orders Respondent to clarify by June 30, 2026, whether any responsive documents exist beyond those already produced in response to Document Requests Nos. G1 and G3.**
13. Concerning *Document Requests Nos. C1, C3 and D5*, Claimants contend that the documents produced are not responsive.⁵
14. In this regard, the Tribunal is not persuaded that sufficient grounds exist for ordering additional production in response to such requests. **Accordingly, Claimants' Request (i) is dismissed with respect to Document Requests Nos. C1, C3 and D5.**

I.B. Unjustified redactions (Claimants' Request (ii))

15. Claimants allege that documents produced in response to *Document Requests Nos. C1, C2, D1, E2, E6 and H3* contain unjustified redactions.⁶
16. According to Respondent, the redactions concern personal data of natural persons (such as name, domicile, phone number, nationality, age and company name) and are justified under Article 9.2(b) of the IBA Rules, Article 115 of the Mexican General Law on Transparency and Access to Public Information ("**Transparency Law**") and ¶ 6(d) of PO2. Respondent further contends that the redactions do not impair the comprehension of the content and context of the produced documents, since Claimants are able to identify "*la comunidad, ONG o autoridad mexicana que aparecen como destinatarias y remitentes de los documentos testados.*"⁷
17. Claimants reply that Respondent (i) has not shown any legal impediment or privilege under Article 9.2(b) of the IBA Rules; (ii) cannot rely on Article 115 of the Transparency Law; and (iii) to the extent it seeks to protect personal information within the meaning of PO2, such information can be adequately protected through the procedure set out in PO2.⁸
18. The Tribunal considers that the record is insufficient to assess (i) the nature of the redacted information, and (ii) whether that information is necessary to understand the content and/or context of the document – both key issues for deciding on Claimants' Request.
19. Accordingly, **the Tribunal orders the Parties to file by June 30, 2026, short submissions (15 pages maximum) on the following issues:**

⁵ Table, cells F25-F29, F101-F102, F127-F138.

⁶ Table, cells E25, E34, E50-E51, E61, E63-E90, E96, E98, E100, E122-E123, E140, E144, E179, E182-E183, E207.

⁷ Respondent's letter dated May 4, 2026, p. 9.

⁸ Claimants' letter dated April 27, 2026, ¶¶ 19, 22 and 24.

- (i) **having regard to Article 9.24(3) of the CPTPP, referred to in ¶ 9 of Procedural Order No. 2, what is the type, category, and nature of the information redacted by Respondent, and**
- (ii) **whether that information is essential to understand the content and/or context of the redacted documents.**

I.C. Request for a privilege log (Claimants' Request (iii))

- 20. Claimants maintain that Respondent's privilege log does not comply with PO5, as it is limited to the redacted documents and does not identify documents entirely withheld from production, notwithstanding Respondent's objections to several Document Requests on privilege or confidentiality grounds. Accordingly, Claimants request that Respondent be ordered to submit a privilege log "*identifying all documents withheld on grounds of legal privilege.*"⁹
- 21. Respondent states that it has not withheld any documents on grounds of confidentiality or privilege and has produced all the documents it has found.¹⁰
- 22. The Tribunal takes note of Respondent's position and consequently **dismisses Claimants' Request (iii).**

II. RESPONDENT'S REQUESTS

- 23. Respondent maintains that Claimants withheld more than 150 documents responsive to *Document Requests Nos. 4, 9 and 11* ("**Withheld Documents**") alleging confidentiality and privilege, without identifying a proper legal basis in their privilege log ("**Privilege Log**").¹¹ Accordingly, Respondent requests an order for production of the Withheld Documents and the dismissal of Claimants' confidentiality and privilege objections.¹² Respondent also objects to the redactions to Document No. 89¹³ and requests production of the unredacted version of that document.
- 24. Claimants contend that the grounds for withholding the Withheld Documents were exhaustively illustrated in their Privilege Log¹⁴ and that the redactions to Document No. 89 are justified as they protect legally privileged information.
- 25. The Tribunal addresses first Respondent's Request concerning the Withheld Documents and then the one concerning Document No. 89.

⁹ Claimants' letter dated April 27, 2026, ¶¶ 26-27.

¹⁰ Respondent's letter dated May 4, 2026, p. 9; Table, cells G25, G196, G199-202.

¹¹ Claimants' Privilege Log, Exhibit C-933.

¹² Respondent's letter dated May 8, 2026, p. 6.

¹³ Document No. 89 was submitted into the record as Exhibit C-635 attached to Claimants' Reply.

¹⁴ Claimants' letter dated May 27, 2026.

II.A The Withheld Documents

26. The Withheld Documents are the following:

- (i) Video interviews of community members conducted by Claimants' consultant, GMI Consulting, as part of the preparation of the social impact assessment ("EVIS") for the Project (Documents 1-119, "**Video Interviews**");
- (ii) The engagement letter between Claimants and their legal adviser, Mr. Franco Lammoglia (Document No. 132, "**Engagement Letter**"); and
- (iii) Documents 120-131 and 133-152, withheld on the grounds of attorney-client privilege ("**Set of Allegedly Privileged Documents**").

27. The Tribunal addresses each category in turn.

The Video Interviews

28. The legal basis indicated in the Privilege Log for the non-production of the Video Interviews is the confidentiality guarantee contained in GMI Consulting's "fieldwork methodology"¹⁵ and the confidentiality forms ("*Avisos de privacidad*")¹⁶ provided to interviewees ("**Confidentiality Guarantee**").¹⁷
29. The Confidentiality Guarantee reads as follows: "*Cabe señalar que se obtuvo el consentimiento expreso de cada uno de los participantes para la utilización de la información en la integración de la presente Evaluación de Impacto Social, toda vez que se les garantizó el uso confidencial de sus datos.*"¹⁸
30. Claimants further rely on the statement in the EVIS that the "*grabaciones en audio y fotografía de los entrevistados [...] están protegidas por principios de confidencialidad en cumplimiento a la Ley Federal de Protección de Datos Personales en Posesión de los Particulares.*"¹⁹ Claimants underscore that the Federal Law on Data Protection is an act of public policy applicable throughout Mexican territory, aimed at protecting personal data held by private individuals.
31. Respondent argues that neither of those sources is a sufficient basis for the failure to produce the documents. Regarding the Confidentiality Guarantee, Respondent submits that "*las declaraciones en documentos privados no constituyen ley aplicable ni crean por sí mismas un impedimento o privilegio legal.*"²⁰ As to the Federal Law

¹⁵ C-941.

¹⁶ C-942.

¹⁷ Claimants' Privilege Log dated March 25, 2026, Exhibit C-933, pp. 2-35.

¹⁸ C-941, p. 1.

¹⁹ C-252, p. 11.

²⁰ Respondent's letter dated May 8, 2026, pp. 2-3.

on Data Protection, Respondent argues that “*una mención superficial a dicha ley en un documento de terceros no basta para demostrar que rige la cuestión de confidencialidad que se plantea ante el Tribunal,*” and that the burden of proving the applicability of that Law falls on Claimants, who failed to satisfy it. Moreover, even if the abovementioned Federal Law applies, it only protects *personal data* (names, addresses and identification numbers), not the entire content of the videos. Thus, Respondent indicates it would accept transcripts or edited versions of the Video Interview files redacted in compliance with the Federal Law.²¹

32. The Tribunal considers that the Video Interview files are likely to contain personal information that both Parties agree must be held confidential²² and can be adequately protected by the production of redacted transcripts or edited versions of the recordings. Accordingly, **Claimants are ordered to produce, at their election, either transcripts of the Video Interview files or edited versions of the recordings, redacted as necessary to protect any personal data contained therein. In all other respects the request to produce the Video Interviews is denied.**

The Engagement Letter and Set of Allegedly Privileged Documents

33. Since the grounds for non-production of the Engagement Letter partially overlap with those invoked for the Set of Allegedly Privileged Documents, both categories are considered jointly.
34. Claimants maintain that the Engagement Letter was properly withheld on two independent grounds: (i) its status as a privileged document under Articles 9.2(b) and 9.4(a) of the IBA Rules, as a confidential communication exchanged for the purpose of obtaining legal advice;²³ and (ii) the confidentiality obligation contained therein, which justifies non-production pursuant to Section 16.16 of PO1 and Article 9.2(e) of the IBA Rules.
35. For its part, Respondent contends that the Engagement Letter is a non-privileged commercial contract and the confidentiality clause contained therein does not constitute “applicable law” and therefore does not create a legal impediment to production.
36. As to the Set of Allegedly Privileged Documents, Claimants maintain that these too were properly withheld on grounds of legal privilege and emphasize that in

²¹ Respondent’s letter dated May 8, 2026, p. 3.

²² As mentioned above, Respondent too redacted certain information in the documents produced in response to Claimants’ Document Requests precisely on the ground that such information consists in personal data protected by the Transparency Law.

²³ Claimants argue that the protection of Articles 9.4(a) of the IBA Rules extends to “*background and internal documents for the purpose of legal advice and settlement and not simply to documents directly presented for those activities*” (Claimants’ letter of May 27, 2026, p. 8, relying on J. M. Waincymer, *Procedure and Evidence in International Arbitration* (2012), CL-261, p. 809).

investment arbitration it is “*widely recognized*” that legal advice from external counsel is covered by privilege and does not require further justification. In any case, both Mexican and Canadian law provide a basis for withholding privileged communications.²⁴

37. Respondent alleges that Claimants failed to identify the applicable law governing their privilege assertion and that non-production is unjustified, regardless of whether Mexican or Canadian law applies. This is so because (i) Mexican law recognizes only professional secrecy (*secreto profesional*), not legal privilege, and (ii) under Canadian law, attorney-client privilege is limited to confidential *lawyer-client* communications for the purpose of legal advice, and third-party involvement nullifies privilege unless that third party is indispensable to providing legal advice.²⁵
38. In the Tribunal’s view, it is unnecessary to engage in the debate on the applicability of Mexican or Canadian law. In accordance with ¶ 16.18 of PO1, the Tribunal may rule on privilege-related objections by applying “*the standard that [it] consider[s] appropriate, without the need to apply particular national law,*” *inter alia* with a view to ensuring a level playing field between the Parties. This is consistent with Article 9.3(e) of the IBA Rules, pursuant to which “*in considering issues of legal impediment [...] the tribunal may take into account [...] the need to maintain fairness and equality as between the Parties.*”
39. The Tribunal is persuaded by Claimants’ argument – which is not expressly disputed by Respondent – that in international arbitration it is a “*widely recognized principle*” that legal advice from external legal counsel is covered by privilege.²⁶
40. Respondent does not dispute that the Set of Allegedly Privileged Documents was created in connection with and for the purpose of providing or obtaining legal advice, but alleges that it was shared with third parties, which, in its view, “*invalida el secreto profesional, a menos que dicho tercero sea indispensable para la prestación del asesoramiento legal.*”²⁷ For their part, Claimants maintain that all third parties to whom the Set of Allegedly Privileged Documents were addressed or copied

²⁴ Claimants’ letter dated May 27, 2026, ¶ 13.

²⁵ Respondent’s letter dated May 8, 2026, p. 4.

²⁶ In support of its position, Claimants mention *Dr. Horst Reineccius et al. v. Bank for International Settlements*, PCA Case No. 2000-04, PO No. 6 (Order with Respect to the Discovery of Certain Documents for which Attorney-Client Privilege Has Been Claimed), of June 11, 2022, CL-257, p. 9: “*The attorney-client privilege, which is widely applied in domestic legal systems, has been recognized in public international and international commercial arbitration rules and arbitral awards*” and refer also to IBA Arbitration Committee Task Force on Privilege in International Arbitration, *Annex 13: Privilege in international investment law and as dealt with by the CJEU and ECtHR*, in *Report of Uniform Guidelines on Privilege in International Arbitration*, of February 2024, CL-262, p. 3, indicating that: “*When assessing whether a document is privileged, the Tribunals have generally found it appropriate to take into account of any relevant rules of international law, as evidenced in the practice of international courts and tribunals*”.

²⁷ Respondent’s letter dated May 8, 2026, p. 4.

facilitated the provision of legal advice, so their involvement does not result in waiver of privilege.²⁸

41. The Tribunal considers that Claimants have demonstrated that all parties to whom the communications were addressed or copied were either legal advisors or consultants whose work was “*integral*” to providing legal advice, and that, as a result, privilege has not been waived.
42. On this basis, **Respondent’s Request with respect to the Set of Allegedly Privileged Documents is denied.**
43. As to the Engagement Letter, Respondent asserts that “*se trata de un contrato comercial, que, por lo general, no contiene asesoria legal.*”²⁹ The Tribunal is not convinced that this is sufficient to eliminate privilege. Indeed, in addition to commercial terms, engagement letters often contain a detailed description of the scope of the mandate and a preliminary legal analysis by the legal adviser of the issues for which advice is sought. Further, the Tribunal is persuaded by the scholarly opinion – cited by Claimants – that “*documents created [...] in connection with and for the purpose of providing or obtaining legal advice*” include background and internal documents created for the purpose of legal advice, not only documents *directly presented* for that purpose.³⁰ For these reasons, **the Tribunal denies Respondent’s Request with respect to the Engagement Letter.**

II.B Document No. 89

44. Respondent objects to Claimants’ redactions to Document No. 89 (submitted as Exhibit C-635 attached to Claimants’ Reply), arguing that the redacted information is not protected by legal privilege, as it consists of “*un intercambio de correos electrónicos elaborados por el Sr. Morgan Poliquin (Presidente y CEO de Almaden), en relación con el comunicado de prensa emitido sobre la negativa de la MIA*” and not communications between Claimants and a legal advisor.³¹
45. Claimants dispute this, arguing that they redacted only the first email in the chain, which contains legal advice Mr. Vásquez provided to Almaden’s executive team following the MIA Denial Decision.³² The Tribunal finds that Exhibit C-635 appears to confirm that only the first email was redacted. Indeed, Mr. Vásquez’s signature at the bottom of the email, the email’s subject line (“*ENGLISH VERSION OF RESOLUTION / PARTIAL*”) and the content of the other emails in the chain confirm

²⁸ Claimants’ letter dated May 27, 2026, ¶¶ 18-22.

²⁹ Respondent’s letter dated May 8, 2026, p. 4.

³⁰ J. WAINCYMER, *Procedure and Evidence in International Arbitration* (2012), CL-261, p. 809, mentioned by Claimants at ¶ 27 of their letter dated May 27, 2026.

³¹ Respondent’s letter dated May 8, 2026, p. 6.

³² Claimants’ letter dated May 27, 2026, ¶ 33.

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that the redacted portion is an email from Mr. Vásquez to Almaden's executives advising on steps following the MIA Denial Decision. Accordingly, **Respondent's Request with respect to Document No. 89 is denied.**

46. For the above reasons, the Tribunal:

- a) **denies** Claimants' Request (i) with respect to Document Requests Nos. A4, C4, D2, D3, D4, E1, E5, E8 and G6;
- b) **reserves** its decision on Claimants' Request (i) with respect to Document Requests Nos. G1 and G3 and **orders** Respondent to clarify by June 30, 2026, whether any responsive documents exist beyond those already produced with respect to Document Requests Nos. G1 and G3;
- c) **denies** Claimants' Request (i) with respect to Document Requests Nos. C1, C3 and D5;
- d) **reserves** its decision on Claimants' Request (ii) and **orders** the Parties to file by June 30, 2026, short submissions (15 pages maximum) as indicated in ¶ 19 above;
- e) **denies** Claimants' Request (iii);
- f) **grants** Respondent's Request for the production of the Video Interviews only in the form of transcripts of the Video Interviews files or edited versions of such files redacted so as to protect any personal data contained therein, **orders** Claimants to produce, at their election, such redacted transcripts or edited video files, and **denies** such Respondent's Request in all other respects;
- g) **denies** Respondent's Request for production of the Engagement Letter and the Set of Allegedly Privileged Documents;
- h) **denies** Respondent's Request for production of an unredacted version of Document No. 89; and
- i) **reserves its decision on the costs of this incident.**

[Signed]

Professor Luca G. Radicati di Brozolo
President, on behalf of the Arbitral Tribunal